PREME COURT, U. S.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI,

Petitioner,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND,

Respondents.

REPLY BRIEF OF PETITIONER

ARTHUR L. JOHNSON,
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Attorney for Petitioner, and, as amicus curiae, "America's Unofficial and Uncompensated Ombudsman" (as such, de facto, for 58 years and recognized as such by California's Governor's office, Speaker's office and the press), "Lincoln's Chief Aide" in the nation (by virtue of parenthood of the idea), "Candle Lighter" and "Champion of Justice and Scientific and Economical Government With a Heart", and, as all of such, representing the 15,000,000 human souls (7,000,000 workers and their 8,000,000 dependents) who will be irrevocably damaged in their entire future by a "Writ Denied" in this vitally important group test case.

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REPLY BRIEF OF PETITIONER

"COMMON SENSE DISPENSES WITH MEDICAL EVIDENCE OF CAUSATION"

These eight words in the court decision relied upon by Respondent in their Opposing Brief (Page 17) make it IMPOSSIBLE for this Honorable Court, as will be brought out fully in this Reply Brief, after a proper foundation has been laid, to deny the petition of the 15,000,000 human souls at the bar of the Court on bended knees pleading for justice without, with the

same stroke of its collective pen, blotting out the word "EQUAL" from the front of the sacred edifice from which such a travesty on justice would emanate and substituting therefore the word "TECHNICAL", so as to make it IMPOSSIBLE for me, as I start my seventh nation-wide speaking tour as America's Ombudsman the first of the year, to proclaim to all and sundry, especially to the students in the law colleges of the land I am to specialize on, the phrase Mr. Justice Fortas says the nation should have driven into its ear, by constant repetition, of "CONSTITUTIONAL RIGHTS ARE NOT MERE TECHNICALITIES".

"FISH OF ONE, FLESH OF ANOTHER" DOES NOT SPELL EQUALITY

The eight-word phrase used by the Court in the case brought into this proceeding by opposing counsel *(Peter Kiewit Sons v. Ind. Acc. Com* (1965), 234 Cal. App. 2d 831, 839) epitomizes your Ombudsman's analysis of the situation of a quarter of a century ago when he first encountered the problem first-hand in the enforcement field, after having babied the act in question (California Workmen's Compensation Law) even before it was born by furnishing copies of the Wisconsin law and material in its support to Hiram Johnson, its "Father" in California, in 1910 and writing most of its basic amendments for the two decades he was with the State (1918-38) so as to deserve the pride he felt when then Secretary of Labor Frances Perkins in 1935, in the Opera House at San Fran-

cisco, referred to him as the "genius" responsible for bringing our Workmen's Compensation Law into first place in the nation, being the "Father" of the Small Claims Court Act in California and of all the Prevailing Wage Laws on Public Works in the entire nation, which were made self-enforcing at a saving of hundreds of millions of dollars to the taxpayers of all the States, and of all the rest of the "progressive labor laws coming out of California in the last two decades".

Looking at the matter objectively to see what the main defect in the law here in question was (just as he sought out and helped remedy the two main defects in the Social Security Act, as the nation's most basic statute in the field of the human right to exist, in the period of 30 years, as brought out on Page 43 of the Petition herein, and, with the aid of a young man by the name of Earl Warren, as brought out on Page 48 of the Petition herein, the main defect in nation's laws as to stealing), he found one major defect that overshadowed everything in the proper working of the machinery of Workmen's Compensation and that was that it ground out justice for those with visible injuries and no justice at all or just token justice or, as Mr. Justice Fortas puts it, "technical" justice for those with "hidden injuries" that could not be seen or x-rayed but were often more disabling than the visible kind.

As the nation's Ombudsman he decided to devote the remainder of his life, if need be, to correcting this major defect in the most important of the human rights statutes of the States—the right to existence

itself and food for loved ones—to the Lincolnian "increased devotion" task of correcting this inequality which made the laboring population of 15,000,000 human souls in California dependent for their compensation and medical attention when industrial injury struck the breadwinner upon the plain unadulterated guesses of the men in white robes, with the men in black robes powerless but to nod their heads in approval and say "AMEN", "AMEN", "AMEN", so as to furnish the nation with its prime illustration of the "technical" justice deplored by the new Chief Justice-designate, which they can't eat and which mends no pain-tortured bodies.

Three tasks faced him in this regard, which he tackled in stride, over the quarter-century period, with the following results:

1. Obtaining for the Commission (now Board), power to overrule the doctor-worshipping referees who considered a doctor's "opinion" (now definitely PROVED to be *synonymous* with "guess", out of the *lips of the guessers themselves, due to the power of an oath,* as brought out, with substantiating *undenied* and *undeniable* proof, on Pages 36 to 46 of the Petition) SACROSANCT and predicated their decisions *entirely* on such guesses. This was accomplished by the Ombudsmanic test case of *Evans v. Ind. Acc. Com.,* 71 C.A. 2d 244 (1945), referred to on Page 44 of the Petition and Pages 28 to 29 of the Opposition Brief of Respondents, which brought the handshakes and hearty congratulations from the then Director of the Department of Industrial Relations and the then

three Industrial Accident Commissioners, who included Everett A. Corten, now attorney of record for the Respondent Board in this case, who felt that real progress had been made toward a more workable and more humane workmen's compensation law by the decision, but which power was abused by the present Board, in violation of their oaths of office (which pinpoints the danger of government by men rather than laws, unless curbed by the courts), to do just the opposite by emasculating it and taking all the workability and humaneness out of it, as far as "hidden injuries" are concerned, so as to drop our perfected law from first to fiftieth place in the nation.

2. Getting a definite commitment from the courts in the Ombudsmanic test case, reviewed by opposing counsel on Page 19 of their Brief, of *Cadotte v. Ind. Acc. Com.*, 86 C.A. 2d 754 (1948), approved by the California Supreme Court so many times over the years as to make it a landmark decision, that it is "IMPROPER" for the Board to go by the medical evidence "SOLELY" in making a decision in this hidden injury field, which the Board *specifically, openly* and in *express* terms of "SOLELY" and, even *worse* than medical evidence, "ESOTERIC" or "OMNIPOTENT" evidence, so as to compound its express DEFIANCE of the higher courts of California and so as to pose a challenge to the highest and most respected court in the land as to whether it, too, is to condone this open defiance of a subordinate Board of the two highest courts of California and consider "substantial" and in compliance with "due process"

such "blue sky" evidence, and especially when such "blue sky" evidence is the "SOLE" evidence relied upon by the Referee and the Board, as here.

This word "SOLELY" presents a blind spot to the sweet little lady opposing us as "Of Counsel". In accusing me of intentionally trying to mislead this Honorable Court, as she does on Page 19 of her Opposing Brief, she either does not comprehend what this word means, which is not possible since she doubtless has a college education to be an attorney and this is a grammar school word, or she intentionally twists the meaning of the English language with the agility of a "Go Go" dancer, which latter is definitely the case since she on Page 19 of her Opposing Brief certainly must understand the meaning of such simple words as "EACH" and "MUST" so as to realize that when the second highest court in the State of California, to the repeated applause of our highest court, says that the "testimony of *each* MUST be considered by the Commission", it means EXACTLY THE SAME THING as the world "ONLY", in the paragraph that follows immediately in the Ombudsman decision of 20 years ago (which was omitted by her in violation of the statutory duty of an attorney "*never* to seek to *mislead* the judge or judicial officer by an *artifice* or false statement of law or fact", *California Business and Professions Code Section 6068 (d)*)—(Emphasis added), which reads thusly, on Page 758:

> "However, petitioner contends that the commission refused to consider AT ALL the testimony

of the petitioner on this subject, considering it a subject to be discussed ONLY by medical men. Were this true, the commission would have acted IMPROPERLY. *(County of Los Angeles v. Ind. Acc. Com.,* 14 Cal. App. 2d 134, 137 (57 P. 2d 1341); *Employers' etc. Corp., v. Ind. Acc. Com.,* 42 Cal. App. 2d 269 (109 P. 2d 716.)" (Emphasis added.)

Your Ombudsman's name is in the official record as the attorney who procured this landmark decision and it was won by the "blood, sweat and tears" of borrowed money even then and the "moonlight" labor of one attorney out of the 30,000 in California who takes SERIOUSLY the 8th or last, *but not least,* duty of an attorney under the above quoted California law (subdivision (h)) *"Never* to *reject,* for any consideration personal to himself, the *cause* of the DEFENSELESS or the OPPRESSED". (Emphasis added.) He laid that cornerstone of workmen's compensation in California just 20 years ago in anticipation of the day when he would be able to PROVE that the Commission (now Board) thus acted "IMPROPERLY" (as the Court ruled then he had not fully proved). THAT DAY HAS NOW COME. IT IS HERE—in THIS CASE,—at the bar of this high Court. The "Go Go" twisting tactics barred 15,000,000 workers from victory in their own State courts and I am, as the nation's Ombudsman, going into the matter fully at this climactic point in the history of the Workmen's Compensation Laws of the nation when those of EVERY STATE IN THE UNION are at stake in this proceeding, since they

ALL have comparable "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" provisions that will be invalidated by a *"Petition denied"* in this national group test case where the issue has been squarely presented but unsquarely met, for when our highest court speaks it speaks, often for a few score years, as witness the Dred Scott decision, income tax decision, and others comparable to the case of first impression before this Court, so that such shameful tactics do not deprive some 15,000,000 potential victims of a public attorney's deceit (perhaps 150,000,000 throughout the nation) of their right to "EQUAL JUSTICE UNDER LAW" in the temple that boasts of such justice in enduring marble.

For the purposes of preventing such a tragedy that will disgrace our highest court FOREVER, since there will NEVER be such a ONE HUNDRED PER CENT PERFECT case of NO EVIDENCE WHATSOEVER to back up claims of "SUBSTANTIAL EVIDENCE", "DUE PROCESS" and "EQUAL PROTECTION" in a thousand years to undo the harm that will result from our nation's highest court's approval of the deliberate emasculation of a State statute that means living money itself and curative treatment to restore working capacity to 7,000,000 breadwinners so that they may support their 8,000,000 dependents without the aid the public charity the Respondent Board has decreed for them in this test case in a society that boasts of being a Great or even a Creative Society that CREATES the VERY POVERTY its architects like

your Ombudsman, who has helped build this law from the ground up, has sought for 58 years to destroy, and will fight to do so so long as there is life in his body, even to the extent of borrowing $755.58 for 300 copies of his Petition in this case, and some $1,100.00 to $1,150.00 more for 300 copies of this Reply Brief, for distribution to the public officials, at all levels, who have betrayed the working population of California by emasculating its most precious statute for the protection of those who toil and throwing them, as dignified men and women on employers' payrolls that included 57 years of INSURED protection against the very charity rolls the Board has now by the very decision here under review decreed for them, into the slop kitchens of public relief and hospital beds of public charity, to the everlasting disgrace of those public officials, one of whom now seeks to preserve their violation of the Constitutions of their State and Nation by chicanery that should be as repulsive to the nation's last resort of justice as it was seductive to our State justices.

On Pages 3 and 7 of our Ombudsmanic Petition to this high court I accused the public attorneys opposing me of "pulling a foul punch" by, in the two courts below, "injecting secret evidence which the Referee and Board ADMITTEDLY did not consider, as proved CONCLUSIVELY by their use of the term 'SOLELY', in describing the evidence on which they acted as 'ESOTERIC' ", and " 'below the belt evidence sneaked in on us'." This charge the State attorneys did not deny, so it stands as the truth that

it is. Instead, they repeated these same reprehensible tactics by sneaking this same evidence into their Opposition Brief on Pages 9 and 10 by stating "Mr. Moreali's testimony was further refuted by hospital records which were introduced on his behalf containing a history given by him to a Dr. George Waters on November 14, 1963, in which after mentioning the 1949 surgery Dr. Waters remarked, 'He (Moreali) had some persistent difficulty with the left great toe thereafter.'"

It was plain dishonest for the attorneys to sneak this so-called evidence into a case of this importance, that involves the most sacred right of 15,000,000 people to existence itself when industrial injury strikes, in the lower courts and it was doubly dishonest for them to bring it in again after being accused publicly of undenied unethical conduct in using it in a smug effort to win just "another" court case, by fair means or foul, with no qualm of conscience as to the 15,000,000 human souls betrayed by their diabolical cunning.

So that the Court may understand the TRUE situation in this regard, let me point out that what really happened was that on the very last day of the hearing, over five years after the litigation started that made *two* trips to the State Appellate and Supreme Courts, after days and days of hearings at which the injured worker, his wife and wife's aunt testified under oath that the applicant had had NO DIFFICULTY WHATSOEVER with either his left or right big toe in the thirteen years between the 1949

surgery and the 1962 industrial injury, and after his family physician verified this in the report set forth in full on Pages 44 and 45 of our Petition herein and the offending doctor himself had been forced to acknowledge, *under oath,* for the second time, after many hours of cross-examination, that there wasn't a word in his records showing any difficulty along this line and that the *worker himself* specifically DENIED to *him* when he called on him after the industrial injury on June 16, 1962 that he had ever had any such difficulty in the entire 13 year period, and two x-rays of May 11, 1959 and June 30, 1962 had been introduced to prove, IN BLACK AND WHITE, that there was absolutely no deterioration of the left big toe and that it was in practically normal position at ALL times with a radiologist's report attesting to this (see Exhibits A and B attached to the Petition herein), the voluminous records (commonly known by attorneys and referees as "junk records" because of their lack of bearing on the issues raised) of the O'Connor Hospital were filed in the case in response to a subpoena issued mainly to bring in the incriminating evidence of the practically normal June 30, 1962 x-ray for comparison with the 1959 x-ray (Exhibit A) to prove them exactly *identical,* and were dug into by the hard-put young research artist to see if she could find some dirt to throw onto the otherwise spotless and perfect case of the 15,000,000 people whose rights she was determined to destroy merely to be able to say that she won another individual case, being a case lawyer and not imbued with any compassion for humanity or the rights of the men and

women and even children she set out to destroy and cast onto charity. When she found the eleven words of dirt she could use to throw into the smooth-running wheels of workmen's compensation machinery *she knew as well as she knew she was alive* (she even had their written word for it) that *neither* the *Referee* nor *any of the three Board members* had *ever seen* this report buried deep in the subpoenaed junk material examined by no eyes but hers. It was called to the attention of no one and was not introduced in evidence or marked as an exhibit. Had it been, your Ombudsman attorney would have placed the applicant on the stand immediately to deny that he had ever made such an absurd statement that belied all of the sworn testimony of four witnesses, including the offending doctor, who admitted he told him just the opposite, and the written reports of the offending and of the family doctor (Petition Pages 44-5) and of the radiologist (Exhibit B) and the black and white irrefutable evidence of the x-ray (Exhibit A), and he would have asked for a continuance to suppoena Dr. George Waters in order to make him admit, under oath, that he was just plain mistaken when he hastily dictated these eleven words or used them to protect his close friend, Dr. Josephson, from a malpractice action for performing an unnecessary operation he had to correct by bringing the big toe back to exactly normal position it was in when Dr. Josephson decided to monkey with it for gain instead of merely lancing the toe to get out the pus and fluid that caused the swelling he testified and reported (see Page 44 of Peti-

tion) occurred "immediately" after the proved "industrial trauma".

To show the magnitude of this young lady's sin against society, let me here point out three pertinent facts that she used to deceive our State courts into betraying 15,000,000 human beings: (1) the words carelessly or intentionally tossed into the history section of an operative report were not dug up out of hospital records in *existence* at the time of the first round of hearings in this case so as to constitute *impeachment* material that would warrant the courts in saying that there was a *"conflict"* in the evidence that was resolved by the trier of the facts so as to permit denial of the petition on this ground. It was in an operative report dated November 14, 1963, which is a year and four months *after* the operation of July 31, 1962, which ALL records showed, even the reports, office records, hospital records, sworn testimony of Dr. Josephson, the operating surgeon, was performed on the basis of a case history of *absolutely no discomfort or difficulty* in the prior 13 years, so could not raise a real conflict in the evidence and must be treated as an obvious mistake as in conflict with all the sworn testimony and with what the injured worker told the first operating surgeon, which would make it absolutely ridiculous to later make such a contradictory statement; (2) the Referee and the Board members verified that at the time of their decisions they had never seen or heard of this report deeply buried in the "junk" hospital records in the case, *both* by *failing to mention such a report,* which

they would have jumped at to bolster up their case, and by the use of the word "SOLELY" as characterizing the *"ONLY"* evidence they considered in the case as "ESOTERIC", which word "SOLELY" I here spell out "S-O-L-E-L-Y" so that when the offending attorney sees it she will recognize it and realize the full extent of her perfidy in deceiving the two highest courts in California into believing that it was considered by the triers of the facts so as to raise an issue of fact, which is the only ground they could have had for denying our petition; (3) the procedure in dragging this dead herring into court when it had no legitimate place in the case after the Referee and Board told all and sundry, including our young Portia, *in writing,* that it was going upon the "esoteric" evidence *"SOLELY"* in *defiance* of the Court decision the Ombudsmanic *Cadotte* case here under discussion, itself violated "due process" since it was done by a public official with no opportunity to rebut or cross-examine and in violation of all rules of decency and fair play by that State official.

See in this regard the following high courrt cases which condemn such reprehensible tactics in no uncertain terms as "FAILURE OF DUE PROCESS":

> "Fair play is the essence of due process" *(Galvan v. Press,* 74 S. Ct. 737, 742, 347 U.S. 522, 530, 98 L. Ed. 737-1954, Mr. Justice Frankfurter).
>
> "Due process of law means fair play and is that process of impartial law which is binding because it is right" *(U.S., ex rel. Montgomery v. Ragen,* D.C., Ill., 86 F. Supp. 382, 388, 391-1949).

"Denial of due process is the failure to observe the fundamental fairness essential to the very concept of justice." *(Lisenba v. California,* 314 U.S. 219, 236, 62 S. Ct. 280, 290, 86 L. Ed. 166.)

"Due process of law must be consonant alike with ordinary notions of fair play and settled rules of law." (*Connolly, as Labor Commissioner of Oklahoma v. General Construction Co.,* 269 U.S. 385, 391, 70 L. Ed. 322, 328-1925, Mr. Justice Sutherland, which is the decision which guided me as America's Ombudsman in 1931 to draft the model Prevailing Wage Law on Public Works for the entire nation along constitutional lines.)

" 'Due process' is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by the whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process." *(Breithaupt v. Abram,* 77 S. Ct. 408, 352 U.S. 432, 1 L. Ed. 2d 448-1957.)

It is off this bedrock that the little lady twister slipped, along with her superior, who I doubt even read the Brief he signed to enable it to enter the august chambers of this High Court, since I can't believe that he has changed so much in the three decades since we used to lunch together as State officials or even in the two decades since he congratulated me on the *Evans* and *Cadotte* landmark decisions in his life field, when he, as a Commissioner,

was writing progressive decisions by the score *implementing* the *Tanenbaum* rule he has now knifed in the back by signing his name to such perfidy as that exposed herein by your Ombudsman. I know he must take orders from his superiors but that does not excuse him from using the simulated dirt his researcher has thrown into the machinery of workmen's compensation in California over his approving signature, hence my reiterated rebuff to them both.

In closing this polite reprimand to two California public attorneys in a function that our California State Assembly has twice voted to pay an Official Ombudsman $32,000.00 per year, with a million dollar appropriation for staff here in his four-year term, to perform, with constitutionally only such power to reprimand when government malfunctions, let me say that the burden on their souls will be great indeed if this Honorable Court also falls for their cunning in winning cases by chicanery, since this is a "ONCE IN A LIFETIME" case of PERFECTION PERSONIFIED as far as lack of *"substantial evidence"*, *"due process"* and *"equal protection"* are concerned, with only the dead herring dragged across the stage by these two public officials, sworn to protect these very workers in their constitutional rights, to mar the picture of the Goddess of Justice in a white robe transformed into justice without a soul and reasoning with no heart and that challenges credulity.

THE MERITS OF THE CASE ITSELF

This brings us to the merits of the case itself in the light of the 8-word quotation at the head of this Brief that I promised to connect up as being determinative of the issues herein presented and the feeble attempt of the opposition to answer them.

First of all, I desire to point out, *with devastating effect,* that the ENTIRE DEFENSE outlined in the Respondents' Brief in Opposition merely builds up a STRAW MAN to knock down and divert the thinking of the individual Justices of this High Court along immaterial lines.

The immateriality is this: It doesn't make a particle of difference, under binding California adjudications by the scores ever since, and even before, the *Tanenbaum v. Ind. Acc. Com.,* 4 Cal. 2d 611 (1935), decision of Chief Justice Waste and his six associates on our State Supreme Court of 33 years ago, whether Joe Moreali had a bunion on his left foot at the time of the industrial accident or not, or even that it had bothered him after his surgery of 1949, which is not alleged except for the off-hand not-considered and unknown at the time of the decision remark of Dr. Waters that "he had *some* persistent difficulty with the great toe *thereafter",* or even that it was bothering him at the time of his industrial injury of June 16, 1962, which is not even alleged by *anyone* and of which there is NO proof whatever and is belied by all the factual evidence analyzed above, both simulated medical and non-medical. The fact is that he was working regularly without complaint of any kind and

was definitely incapacitated from work by the industrial injury (toe-stubbing), so much so that he couldn't even put his shoe on because of the swelling and pain, all of which was adjudicated by the Referee and admitted by all, but which gave him an empty award because the deciding doctor, the approving referee and the "AMENING" board and justices WENT OFF ON A TANGENT and ignored TOTALLY, COMPLETELY and ENTIRELY the "LIGHTING UP" or "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" rule of the *Tanenbaum* case, which is here reiterated in bold and italicized type so that even the blind can see its searing effect on the case of the opposition and the deaf can hear its roaring thunder of why was not Joe Moreali entitled to the benefit of this rule when EVERY OTHER injured workman in the State of California in the last 33 years and before had been governed by it? Does this Italian-descent flesh make him a fish that should cause the highest court in our land to deny him the EQUAL justice that is his due, or does the heaven-inspired motto our Vice President uttered recently of "EVERY HUMAN BEING IS PRECIOUS" govern all but the Supreme Court of our land, which should be the VERY FIRST to *apply* it and *BLAZEN* it forth for ALL the world to see, hear and heed?

The ignored but binding rule of Chief Justice Waste and his six colleagues on our Supreme Court in *Tanenbaum* reads as follows:

> "It is now *definitely settled* that the ACCELERATION, AGGRAVATION or 'LIGHTING

UP' of a preexisting disease IS an INJURY in the occupation causing the same. *(Eastman v. Industrial Acc. Com.* (1921), 186 Cal. 587, 594 (200 Pac. 17); *Mullane v. Industrial Acc. Com.* (1931), 118 Cal. App. 283, 287 (5 Pac. 2d 483); *Georgia Casualty Co. v. Industrial Acc. Com.,* 17 I.A.C. Rep. 139.) The UNDERLYING theory is that the EMPLOYER TAKES THE EMPLOYEE SUBJECT TO HIS CONDITION WHEN HE ENTERS THE EMPLOYMENT, and that therefore compensation is NOT to be DENIED merely because the workman's *physical condition* was such as to *cause him to suffer a disability* from an injury which *ordinarily,* given a STRONGER AND HEALTHIER constitution, would have caused him LITTLE OR NO INCONVENIENCE. *In such cases* FULL compensation for the ENTIRE disability caused by the injury suffered is recoverable although the physical condition of the employee CONTRIBUTED TO and INCREASED the disability caused by the injury or prolonged and INTERFERED WITH healing and recovery. In other words, there is NO AUTHORITY for PRORATING the extent of the disability due to the accident itself on the one hand and that due to the aggravation caused by the employee's physical condition on the other. *(Hendrickson v. Industrial Acc. Com.* (1932) 215 Cal. 82, 86 (8 Pac. 2d 833)." *(Tanenbaum v. I.A.C.* (1935), 4 Cal. 2d 615, 617—Emphasis added.)

The *Hendrickson* decision (also by a unanimous Supreme Court), cited by our California Chief Justice in this sacred MAGNA CHARTA of workmen's

compensation for *the entire nation* adds this illuminating language that should sear the soul forever of any who would deny its hallowed precept or spit upon its ineluctable logic:

> "The BENEFITS OF THE ACT are NOT ALONE for those in PRIME PHYSICAL CONDITION. The LESS FORTUNATE are EQUALLY entitled to compensation, provided, of course, the injury arises out of and is sustained in the course of the employment. *(G. L. Eastman Co. v. Industrial Acc. Com.* (1921) 186 Cal. 587 (200 Pac. 17); *F. H. Gilcrest Lumber Co. v. Samuel D. Rendler,* 109 Neb. 246 (28 A.L.R. 200, 190 N.W. 578." (Emphasis added.)

This 47-year-old humane and anti-charity doctrine of planned insurance for ALL against the calamity of industrial injury was not applied to Joe Moreali, not because of his name or the color of his eyes but because the Referee to whom his case was assigned caused six years of litigation by refusing to recognize this simple doctrine as the basic rule he cut his teeth on when he became a referee and was so overcome with awe when the man in white robe claiming "OMNIPOTENCE" appeared before him that he said: "I defer to you. You decide the case for me. It is too 'esoteric' for me. I know I have the power, under the doctrine of judicial notice, to rule that the industrial injury which is admitted in this case, did 'ACCELERATE', 'AGGRAVATE' *and* 'LIGHT UP' under Chief Justice Waste's wording, any previous condition or disease Joe Moreali may have had, but when I swore to support the Constitution of my

State and Nation as interpreted by the courts, in the conduct of my office, I did so with the reservation that God comes first and since you speak for God in this matter I must obey you rather than the unanimous courts of nearly half a century, even though they have ALL ruled also that I act 'IMPROPERLY' in so doing 'SOLELY' on your 'ESOTERIC' evidence, and heard you testify with my own ears that 'as far as I was concerned I did not even consider the question of trauma lighting up, his particular condition', so I must consider your evidence as coming from God as an exception to the mere human rule of Chief Justice Waste by which I am not bound, as I do also the unanimous 2-decade Ombudsmen *Cadotte* ruling, in advance, that I am acting *'improperly'*, and thus without *'due process'*, in so doing, as I respect God more than the courts and you claim to be God so I take you at face value."

Even after the Referee had this pseudo-God exposed to him, on Petition to Reopen, by black and white evidence of two separate x-rays taken three years apart (see Exhibits A and B of our Petition) as a perjurer who had performed an unnecessary operation merely for the fee there was in it for him and that had to be corrected back to the pre-operative normal state by another doctor, the Referee persisted in his pseudo-God exception to the down-to-earth human being rule of Chief Justice Waste and his colleagues. The Respondent Board bowed to all this "ESOTERIC" reasoning and made it the law in California to govern California's 7,000,000 workers, and their 8,000,000 dependents, for all time to come in the

future, with State Appellate and Supreme Court approval. If the Supreme Court of our nation now adds its approval, workmen's compensation will be set back half a century in America, as all State laws in this field have comparable "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" provisions whose validity will be thrown in jeopardy and a United States Supreme Court decision is IRREVOCABLE from the practicable standpoint, as a similar case of perfection personified as a test case under "FAILURE OF SUBSTANTIAL EVIDENCE", FAILURE OF DUE PROCESS" and "FAILURE OF EQUAL PROTECTION" could not be found in a thousand years, it representing a quarter of a century of careful building toward the goal of safeguarding our law and keeping it first in the nation, which place it attained when it adopted the no prorating "lighting up" rule in question 47 years ago in the *Eastman Company* case, reaffirmed 36 years ago in the *Hendrickson* case and restated by Chief Justice Waste 33 years ago in the *Tanenbaum* case in immortal, succinct and glorified language that will never die in spite of the knife in the back from the Referee and Respondent Board in this *Moreali* case and the lead in the back from the Board in the *Granado* case cited in our Petition (Pages 31-33) but ignored entirely in the Brief of Respondents *(Granado v. Workmen's Compensation Appeals Board,* 258 A.C.A. 131-136, 1/22/68, 1st Appellate No. 24644, Supreme Court No. S.F. 22,599).

So that our Supreme Court in distant Washington may fully understand the situation here in California

it is being asked to pass upon as it enters this new but supremely important phase of the human rights field it has done such yeoman service in over the years, let me, as America's Ombudsman who has spent his entire life in this and kindred social justice fields, explain the exact nature of the problem that is unfolding before the Court that has been confused no end by the Opposing Brief filed on behalf of the Respondent Board that has been adopted by the Respondent insurance carrier, which Brief not only offends human dignity by its unfair, unethical and unworthy of public officials misrepresentation of the evidence but a like misrepresentation of the law itself as solidified by a half century of building by previous constructive Industrial Accident Commissioners and the higher courts of our State that took seriously the constitutional duty imposed upon them by the special Constitutional Amendments we Ombudsmen of the Hiram Johnson era secured the passage of in 1911 and 1918 to *FULLY* protect *ALL* workers injured in industry, and their dependents, under *ALL* circumstances whatsoever, going so far as to use the word *"ALL"* 7 times, the word "COMPLETE" twice and the word *"FULL"* six times, and ending up with this final admonition to would-be rapists of the sacred policy established that would affect the future lives of most of California's people:

> "to the end that the administration of such legislation shall accomplish SUBSTANTIAL justice in ALL cases expeditiously, inexpensively and without incumbrance of any character, ALL of which matters are EXPRESSLY DE-

> CLARED to be the SOCIAL PUBLIC POLICY of this State, binding upon ALL departments of the State government." (Constitutional Amendment adopted by the people of California on November 5, 1918, to amend Article XX, Section 21 of the California Constitution) (Emphasis added).

Pursuant to this broad and humane constitutional policy ALL enforcement officers and ALL courts went along with its implementation into the fabric of our society and Chief Justice Waste's *Tanenbaum* rule of "industry takes a workman as it finds him" became the SETTLED LAW of the State with proration of disabilities limited strictly to ratings for PERMANENT disabilities as indicated plainly in all the cases twisted intentionally by opposing counsel in their brief in their frantic efforts to make them apply to the instant case, which we desire to make plain to them, although they already know it, and to the Court in case it is misled by their unethical gyrations, is a case involving TEMPORARY disability ONLY, to which NONE of the quotations in the Opposing Brief have any applicability and to which the *Tanenbaum* rule of NO PRORATING of TEMPORARY disability should have been applied WITHOUT QUESTION, there being but *two* known cases of temporary disability in the whole history of California to which it was not applied, the instant case of *Joe Moreali* in which our State Appellate and Supreme Courts were misled by opposing counsel to decide adversely, so as to necessitate this appeal to the nation's highest court, on *stare decisis* penalties to the workmen's compensation laws of every State in the Union unless reversed,

and the case of *Henry Granado* (supra) still pending before our State Supreme Court for September hearing, which will never reach this Honorable Court if we obtain a favorable decision herein but which will throw the entire law into intolerable turmoil if our State Supreme Court decides it favorably to California's 15,000,000 working population and this Honorable Court decides against them, the higher national court prevailing so as to throw the State Court's decision in jeopardy, with no right of appeal from a favorable but empty decision, a situation that would be unique indeed in the history of American jurisprudence to the extent of making a mockery of it and of justice itself.

This case therefore indeed presents the opportunity for a landmark decision for progress in protecting human rights of the most basic sort, the right to very existence itself when industrial injury strikes, or a shamemark one that will throw progress to the winds in the human rights field, set back workmen's compensation half a century and overload the relief rolls of the nation's most populous State, and also of the other 49 States, to the breaking point of perhaps food riots in America and encourage crime in the streets for money to feed one's loved ones deprived of just compensation and rehabilitating medical care for the breadwinner by the nation's highest court, to its everlasting disgrace.

Looking to CAUSES so that effective *remedies* may be devised, let me, again as America's Ombudsman who has given 58 years of study to such cause and

effect problems in government and to devising and securing the adoption of remedies for them, pinpoint the entire difficulty that has arisen in California that will blow over as a "tempest in a teapot" if the Nation's and the State's highest courts CONCURRENTLY decide to restore the pre-Moreali and pre-Granado status quo of domestic tranquility in this sacred right to existence field, or if EITHER of them decides the matter adversely to the working people of the State of California officially, and thus the working population of the entire Nation unofficially, will lead to a new declaration of war, on the casting of human bodies onto the industrial scrap-heaps of the nation, by the Ombudsmen and Lincoln Aides of today, who will fight again this malfunctioning of democracy that creates poverty instead of security, a war that will take us into every law school of the nation, every university, every college, every junior college and every high school to organize the youth of the land to protect the security of their elders the government, in all its three main divisions—administrative, legislative and judicial—has failed to protect.

The CAUSE, at which we will strike first, in such event of an anti-society decision from EITHER court, will be exposed for all to see and read in the form of a PUBLIC ANNOUNCEMENT of the war on the Pillsbury-Waste Tanenbaum ruling of "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" declared by one Roy J. Bell as the new Administrator of the State Division of Industrial Accidents on July 14, 1967, in a press release reproduced in the

attached Exhibit A for the elucidation of the Court (and the 291 others receiving copies of this Reply Brief) under the Court's power to observe such background information under "JUDICIAL NOTICE", the leading cases on which, in the three courts involved in the current proceeding, hold as follows:

> "The COURT may not shut its eyes to WHAT ALL OTHERS CAN SEE AND UNDERSTAND." (*U.S. v. Butler,* 297 U.S. 1-88—1936) (Emphasis added)
>
> "Courts should take notice of whatever is or OUGHT TO BE generally known, within the scope of its jurisdiction, FOR JUSTICE DOES NOT REQUIRE THAT COURTS PROFESS TO BE MORE IGNORANT THAN THE REST OF MANKIND." (*Varcoe v. Lee,* 180 Cal. 338, 345—1919) (Emphasis Added)
>
> "Juvenile Courts CANNOT and WILL NOT shut their eyes and ears to EVERYDAY CONTEMPORARY HAPPENINGS." (*In re Contreras,* 109 C.A. 2d 787—1952) (Emphasis added)

As America's Ombudsman and one of the fathers of the sacred law in question who had nursed it with loving care through its infancy and through 36 years of its adulthood, I hung onto this clipping from the San Jose News of July 14, 1967 and watched the advance sheets in the Appellate and Supreme Courts to complete my eye-opening or education in this regard that the Courts have held it is proper for all those interested in the welfare of their nation, including judges, to do, for the SECRET WEAPON that was to be used to deprive the 7,000,000 workers

in California, and their 8,000,000 dependents, of their "UNDESERVED" benefits, under the Constitutional provision of 1918 that made it, under their oaths of office, MANDATORY on ALL public officials, including Mr. Bell and his Board, to preserve for those very workers, and their dependents, the gains made for them in the workmen's compensation field in the last half century of such compensation, including medical care, decreed by the People of California in their march upward from the "HUMAN INDUSTRIAL SCRAP-HEAPS" of the Nineteenth Century to the zenith of perfection in the field of human dignity that treats men whose hands are soiled by toil, women whose trousers are soiled by grease and children whose diapers are empty for lack of food, as more than mere scraps of iron of whose non-existent souls it cannot be said that "Every human being is precious, even the 'undeserved' and unwanted ones".

The answer came when the "secret weapon" sword was drawn by the Board this same Mr. Bell introduced me to when he invited me, as the veteran workmen's compensation attorney of this area, to see their members installed in office at San Francisco by one of our Supreme Court Justices and heard them expound their fidelity to the oaths they took to *liberally construe* the provisions of the law for the "PROTECTION" of the 15,000,000 wards they became the guardians of the rights of under this most sacred law on the statute books of California, hallowed by the people themselves.

The sword this same Board drew to take the workers of California, and their dependents, off their

employer-from-public purchased *insurance* rolls and place them on the public RELIEF rolls of their Government, pierced the very heart of workmen's compensation itself by a frontal attack upon its most basic precept that its first Commissioner, Arthur Pillsbury, invented as the keystone of its proper enforcement, to wit, the "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" rule.

BELIEVE IT OR NOT, this 47-year treasured life-saving rule of every single Justice and of every single Commissioner and Board member in the last half century, and of every State in the Union, turned out to be the "BENEFIT" the 7,000,000 workers of California, and their 8,000,000 dependents, did not "DESERVE" and for whom the "BELL" tolled.

Granado fell first to the tolling of that Bell and had ONE-HALF ($35.00) of his Legislature-guaranteed weekly compensation of $70.00 taken away from him and his dependents, *plus* one-half of the MEDICAL ATTENTION needed to rehabilitate him and put him back in industry as the breadwinner of his family instead of as the new tax-eater the tolling of that bell created of him (and his family).

Moreali was the next victim of the Bell-ringing "prorating of temporary disability" announcement that brought grief to his family of three by not only taking away *fifty-per cent* of his $70.00 per week employer-purchased COMPENSATION but ONE HUNDRED PER CENT of it, in addition to *ALL* of his MEDICAL ATTENTION, so as to force him onto the *charity* of his *fellow-workers* contributing

one penny out of every dollar they have earned for thirty years to a "TRUST FUND" for off-the-job illnesses or injuries for his $70.00 per week to feed his family, as a plain $2,070.00 "theft" from that sacred fund, and onto his privately carried Blue Shield insurance thus PERVERTED, by Deciding Doctor, Referee and Board ukase, into a free "come and get it" grab of $1,005.00 from that privately-paid-for insurance, in the absence of which two victimized funds he and his family, as well as Henry Granado and his family, would have had to leech onto Governor Reagan's ever-increasing CHARITY rolls, as will millions of other potential victims of the abolition of the "no prorating of temporary disability" rule in the days that are to come unless he, as the national figure he has become, repudiates the funeral-bell tolling for millions of Californians *in his name* as being rung without his sanction, or the Courts and/or the Legislature do it for him.

The writer, as America's impartial, non-partisan Ombudsman, prefers the former course as he has great respect for California's Governor and feels that time will mellow him into a recognized humanitarian with unquestioned compassion for the common man, such as his Legislative Secretary imaged him in his letter of May 9, 1967, attached hereto in facsimile as "EXHIBIT B", giving official recognition and commendation, as the *eleventh* California Governor so to do, to a lifetime of humanitarian public service such as is herein currently being performed in the preparation and distribution of this REPLY BRIEF and the basic PETITION FOR WRIT OF CERTIO-

RARI that preceded it, as Ombudsmanic advice and guidance from the one in the best position in the entire nation to know the facts of life and the dangers of death to the sacred words of California's and the Nation's ELEVENTH COMMANDMENT of "THOU SHALT NOT PRO-RATE TEMPORARY DISABILITY", to the nation's top nine men in the judicial field and 291 of the State's top men in the administrative, legislative and judicial fields, who should *all* JOIN HANDS in the working out of this problem for the benefit of those whose *public servants* they ALL are and millions of whose lives will be blighted by the malfunctioning of our democratic process in this field or will "OBTAIN" the family security and happiness that is the objective of our State Constitution, the Constitution of our Nation permits them to "PURSUE" and our high court judges will deprive them of the right to even *consider* if they deny them the relief sought at their hands in this group test case.

THE "COMMON SENSE" RULE

This rather elaborate foundation, necessitated by having to build "STATUS" along with background material to support it, in order to offset the brazen attempt to make a single case issue with simulated evidence and warped law out of a legitimate group test case, necessitated by a public official attack on a half a century old law that has been twisted out of shape so as to almost totally destroy its effectiveness

in its most essential day-to-day operation to the very people it was intended to serve, so that the Justices of this High Court will not get the impression that I am an impetuous imposter claiming achievements that will be wiped out almost completely if the reprehensible defense tactics in this case succeed and claiming *defensive* insights I have no right to merely to be impressive and thus self-defeating as an egomaniac engaging in idle talk instead of a humble citizen with worthwhile achievements I am trying by this solid defensive maneuver to protect of a major nature of substantial benefit to the nation, and over a period of more than half a century, and with a potential of even greater service to humanity in the days that are to come, in other words, that I am REAL and not a phony in thus fighting back to save our sacred Workmen's Compensation Law from utter destruction in its major effectiveness, that I don't have a Napoleonic complex in claiming to be America's Ombudsman when I am not, in claiming to be the Edison of Government when I am not, in claiming to be Lincoln's Chief Aide in this nation when I am not, in claiming dedicated service to my nation and its people for 58 years, as Justice George A. Sturtevant of the California Appellate Court recognized *thirty-four years* ago by saying: "He is one of the most tenacious, consistent, intelligent, and conscientious individuals in the public service. Keep your eye on him. YOU WILL FIND LOTS MORE TO COMMEND AS TIME ROLLS ON", and as I am sure Chief Justice Warren and at least three members of our State Supreme Court who have known me for

three of four decades (Earl Warren for going on five) will verify, brings us to the connecting up of all this material into a neat package of refuting summarized law and evidence that will give the Justices something to put their teeth in when they go to formulate a decision, after weighing both sides and a complete analysis of the issues in this, their maiden test case in a field more vital to humanity than even the right to speak or the right to live in a certain community, namely, the right to LIVE, *period.*

What we are asking of this High Court, in making such a weighty decision, is merely a recognition of the following basic principles:

1. That absolutely NO evidence at all in a *factual* matter cannot support a decision that there was evidence of a "SUBSTANTIAL NATURE" and thus "DUE PROCESS OF LAW" in this case.

2. That admitted "ESOTERIC" evidence "SOLELY", on which the Referee and Board definitely grounded their decision, *in their own written words,* cannot support a denial of justice based on such evidence from the outside world.

3. That claimed "OMNIPOTENCE" on the part of the doctor who wrote the decision for the Referee cannot justify this High Court in upholding it as coming from God, and thus binding on all mortals on earth, including the Justices themselves, which is what they MUST do to lend their "AMEN" to the doctor's blasphemous decision in this case, unique in the annals of jurisprudence in this regard.

4. That the defense asserted in counsels' Opposing Brief is SIMULATED, both as to *law* and *facts,* is evasive of the main issue involved, which is whether the Workmen's Compensation Appeals Board of the State of California can get away with its INTENTIONAL, PUBLICLY ANNOUNCED attempt to emasculate the very main cornerstone feature of the Act it is sworn to protect and do it by twisted inapplicable diversionary arguments of counsel that not only misrepresent the facts but belie the law.

5. That the rule of "COMMON SENSE" counsel themselves raise on Page 17 of their Opposing Brief as coming from the second highest court in the State of California, which refutes the saying that common ordinary horse sense is getting so scarce nowadays that only the horses have it, should be applied to the case at issue, just as it was when the Supreme Court of the State of California faced this very same crucial issue originally 33 years ago in the *Tanenbaum* case (supra) as to whether it is POSSIBLE to prorate or apportion TEMPORARY disability. The unanimous court in that case realized that it was NOT possible to under any circumstances, and, although it did not say so in so many words, it adopted the rule that "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" in order to bridge the gap between an ENFORCEABLE and life-giving law and an UNENFORCEABLE one that would in no wise benefit the working population the people of California wrote it into their Constitution to protect. That bridge has now, after 33 years of marching traffic by *REFU-*

GEES FROM POVERTY, been dive-bombed by the Board in the *Granado* case (supra) and in this *Moreali* case, both before high courts for review as to their finality. In our *Moreali* case there was none to protest (see Board's decision on Page 13 of our Petition), but in the *Granado* case there was a vigorous dissent by Board Member Kenneth J. Fryer, who realized what the majority decision of Board Members Morton R. Colvin and Hale Ashcraft was doing to the workability of the Workmen's Compensation Law of the State of California when he said very succinctly and poignantly:

> "I dissent: In my opinion there is no legal basis for apportionment of *temporary* disability and medical treatment in this case. In my view the majority opinion confuses the concept of apportionment of *disability* with the concept of apportionment of *liability.*
>
> "This is not a case in which the industrial injury has caused only a part of the temporary disability in question, and no more. Rather, the injury is a cause of the entire disability such that it is IMPOSSIBLE to segregate any part of the disability as being not causally related to the injury. Under these circumstances, apportionment cannot be justified on the basis that there are causative factors other than the injury." (Emphasis added.)

In our *Moreali* case there was none to shout that key word "IMPOSSIBLE" to the housetops, but an insurance company doctor, later proved by the black and white evidence of the x-ray available to the very eyes of our current reviewers if they will turn to

"EXHIBIT A" attached to our Petition herein, to be an unadulterated faker and a fraud, stepped forward to state, not in effect, but in so many words included in his use of the term "ASSUME SUFFICIENT OMNIPOTENCE" and his avowal of non-adherence to the man-made or court-made rule of necessity that "lighting up" of the previous condition as spelling compensability is the *only* POSSIBLE and workable rule HUMAN ingenuity could devise: "Nothing is *impossible* for me. I have 'OMNIPOTENT' power *possessed by no one else on earth,* so, as God, I pronounce Joe Moreali's industrial disability that caused his toe to swell and pain him so that he couldn't put his shoe on as exactly ZERO with ONE HUNDRED PER CENT of his disability attributable, on a pro rata basis, to the bunion I *admit* lay *sleeping* for *thirteen years* until industrial trauma struck it and woke it up." To prevail in this view this doctor, even though he was glorified by a Referee, three Board members and ten high court Justices in California as the God that he isn't, must be ruled by our nation's highest Court to indeed be God, which I don't believe it will care to do in all sanity and in violation of the First Amendment.

This brings us to the hair-line distinction that opposing counsel have drawn in arguing that the "COMMON SENSE" rule they outline on Page 17 of their Opposition Brief as coming from the State Appellate Court in the *Peter Kiewit Sons* case, in the eight

words that head this Reply Brief, does not extend to *"hidden injuries"*. The Court's full wording is "If a painter falls to the ground as a result of a scaffold collapse, breaking his leg, COMMON SENSE *dispenses with medical evidence of causation.*" What counsel is thus saying is that if the x-ray shows the *slightest* hair-line fracture in the bone of a leg, "COMMON SENSE" makes it mandatory on the Referee, the Board and the Justices to give sacred "JUSTICE" to the injured worker and his dependents, whereas if the x-ray fails to show such a hair-line fracture in the bone of a big toe (as the one of Morea-li's in Exhibit A attached to our Petition herein clearly does not) and fails to show the non-x-rayable *"immediate* swelling and a great deal of *pain* . . . with an *increase of fluid* in the joint" the offending doctor cited who did not know of the materiality of this under the "lighting up" rule in force in California for "ALL" workers (See Pages 18 and 44 of our Petition) for the past half century, and the Honorable Justices of the Supreme Court of our Nation predicate their decision on this hair-line distinction, then I will, as America's Ombudsman, as I weep in solitude in my office workshop over the crushing defeat for 15,000,000 human souls in California and for America's most precious slogan of "EQUAL JUSTICE UNDER LAW", repeat over and over and over again "O JUSTICE WHY ARE YOU SO BLIND?"

OUR CASE IN A NUTSHELL

There you have, Honorable Justices, our case in a nutshell, as to not only "LACK OF EQUAL JUSTICE" but as to "FAILURE OF DUE PROCESS" and its handmaiden "LACK OF SUBSTANTIAL EVIDENCE" on the defense and "LACK OF JUDICIAL NOTICE" and "LACK OF COMMON SENSE" on the offense, all of which are most certainly direct violations of the Fourteenth Amendment to the Constitution of the United States. Our entire case is as simple as that, opposing counsels' cry of lack of brevity and lack of Federal questions to the contrary notwithstanding.

MOPPING UP OPERATIONS

Assuming that the dire calamities pictured above are not going to befall our innocent wage-earning people who toil to build our nation and the sacred slogans of history on which they are entitled to rely, I am, under *"Mopping Up Operations"*, calling the Court's attention, seriatim, to the following gripes of opposing counsel that bear refutation in passing:

1. Page 5. "Jumble of out of context statements" turns out to be *correctly-quoted* statements consolidated for the very brevity purpose counsel first cry for and then cry against, that can have no possible different meaning out of context than in.

2. Page 5. "Disparage the doctor's competence and candor". I not only do that but I flatly accuse him of *proved* deliberate *perjury* and *fraud* in testi-

fying that Joe Moreali's big toe was so subluxed as to "lie *under* the second and third toes" that all the Justices can see, even without their glasses, from the x-ray attached to our Petition as "Exhibit A" was a deliberate falsehood concocted to justify the absolutely unnecessary operation for personal gain alone, on the man's toe, which had to be corrected back to where it was by another doctor.

3. Page 5, footnote. Complaint is made that the very doctor's self-characterized "decision" that formed the basis of all the decisions that approved it was "not, strictly speaking, a part of the record". Now the young lady Portia wants to hide and expunge it as being ashamed of its wording as the "SOLE" evidence she has on which to base her case. In the court below (R. 195) she described it as an "ELOQUENT" exposition of her view that the doctor's "ASSUMED OMNIPOTENCE" (which is concededly the "SOLE" basis of his "decision", by failure to deny this or prove otherwise) is binding on the higher-in-station judges that pased on it.

4. Page 5, footnote. She also wants to keep out the doctor's sworn testimony, which your Ombudsman paid $138.00 of borrowed money to preserve for this High Court, if it calls for it, that, in his *"decision"*, he did not *"even consider* the question of trauma *lighting up* his particular condition", which *in itself,* is *failure of due process"* because, as a result, NONE of the reviewers of his decision did either, so as to bar *Joe Moreali,* as the first California worker to be so barred aside, perhaps, from *Henry Granado* (supra),

from the benefit of this fundamental rule that has been the salvation of the working population in California for at least the last 33 years since *Tanenbaum* (supra) and which has now been completely emasculated and declared null and void in California in this case here under review and in the *Granado* case under review by the highest court of our State.

5. Page 8. The x-rays were not introduced to show that the preexisting congenital condition was non-disabling prior to being "lighted up" by the 1962 injury and it is ridiculous for opposing counsel to say "no expert evidence was offered to support this view". The x-rays (the 1959 and 1962 ones were identical according to the roentgenological reading in Exhibit B so only one was exhibited here) were offered in support of our PETITION TO REOPEN solely to prove Dr. Josephson a flat liar and deliberate perjurer when he testified under oath that the big toe "was UNDER the second and third toe" when he operated and to prove that its position had not changed one iota in *three* years so as to be "NEW EVIDENCE" of a most cogent nature to destroy the God-image of the faking "omnipotence"-claiming doctor that deceived a Referee, three Board members and ten high court Justices into believing that he really had the claimed occult or "omnipotent" power that ALONE could make it POSSIBLE for him as the only human being of the over three billion of this earth to pro-rate temporary disability. The "non-disabling" prior to the injury was proved, beyond peradventure, by the *sworn testimony* of the man, his

wife, his wife's aunt and the otherwise falsifying doctor (who couldn't lie on this since we had him bring his office records into court on two occasions to prove the contrary), by ALL his reports and by the report of the man's family doctor set forth in full on Pages 44 and 45 of our Petition.

6. Page 9. All the opposing counsel's double-talk about the doctor's "static" and "dynamic" jargon is put *completely* out of the case by our Ombudsman's *unaccepted* challenge on Page 24 of our Petition to all and sundry who might fall for such worse than sophistry that saved a doctor from a perjury indictment to try flexing a big toe even under the second toe without even *one* muscle to pull it sideways.

7. Page 9. The injured worker's sworn testimony of 1962 and 1967 that he "had had *no difficulty whatsoever* with his left foot from a few months after the 1949 surgery until the 1962 injury" was NOT "refuted by the very 1959 x-rays on which the petitioner was relying to reopen his case", as opposing counsel is deliberately trying to *mislead* this High Court to believe. The record shows plainly that the 1959 x-ray was taken because of a broken *little* toe stubbed on a chair at home but happened to encompass the big toe so as to *fortuitously* drop into our laps the NEW EVIDENCE to destroy, on PETITION TO REOPEN for that reason, the God-like image of the doctor actually claiming "OMNIPOTENT" power that he didn't possess and actually claiming, *under oath,* power for a big toe to flex sideways, "like a thumb", the doctor swore, that it doesn't possess,

another indictable perjury, provable by 3,220,000,000 witnesses. We therefore chalk this false statement of counsel up as additional frantic desire to win an individual law case by foul means even though the souls of 15,000,000 innocent people are seared in the process.

8. Page 10. The bringing in of the secret "remark" of Dr. Waters was of like nature, as brought out fully above.

9. Page 11. There were no "misrepresentations" of Dr. Josephson's opinions as is falsely alleged. They were *all* stated *accurately* and in his *own* language and they speak for themselves.

10. Page 12. The Petition is "ACCURATE" *in every respect,* in line with half a century of honest practice that has never been impugned before, and cannot be here, as has been attempted by bold, *unsupported* assertion, and has been presented with as much brevity and clearness as is consistent with the importance of this group test case to the people of the entire nation who would be adversely affected, millions of them perhaps to the point of pauperization, by adverse action of the nation's highest court on what was the leading Workmen's Compensation Law in the country until it was emasculated down to 50th place by the two Board decisions on which high court review is being sought. It may not equal the BRANDEIS BRIEF in clarity or sociological data brought in to establish social public policy by judicial decree but that is because of the limitations God placed on the mind of your Ombudsman. He makes no claim to

being a Louis Brandeis and knows that he can nowhere approach him in thinking capacity, judicial expression or elegance and conciseness of language, but he does claim, *and can prove*, that he has been the nation's unpaid and unofficial Ombudsman for the last 58 years of his life that he has devoted to the task, and has been its press-recognized for over forty years "EDISON OF GOVERNMENT" and, of late, Lincoln's Chief Aide since God has favored him, out of 200,000,000 people (except for Raymond Massey), with looks like Lincoln, a beard like his, and thoughts like his he will spend the rest of his life, at 75, implementing into the social fabric of this nation, just as he is spending some $6,000.00 of his borrowed time and some $2,000.00 of his borrowed money to press this group test case for all the people of America to their highest court (with his only hope of financial reward, if he wins, a $335.00 subrogation commission Blue Shield has promised him on the $1,005.00 it spent keeping the Moreali family off the relief rolls of the State when the workmen's compensation insurance system failed them in its emaseculated state), and another $6,000.00 of his borrowed time to implement Lincoln's thoughts on how to make democracy work PROPERLY, and not malfunction as it has with the Workmen's Compensation Act, Juvenile Court Act and Disability Insurance Act, at the legislative level. If he has shortcomings as a scribe in his efforts to gain the STATUS necessary for victory for the American people, his detractors should commend him as public officials sworn to effectuate the very law he is trying to nurse back to life, not to stab him in the

back with false cries of "inaccuracy", and crocodile tears for lack of brevity and clearness in trying to undo all the planned confusion and erase the false pictures they have brought into the case.

11. Page 12. "Opportunity to present" evidence that is thrown into the waste-basket and replaced by "ESOTERIC" and "OMNIPOTENT" evidence "SOLELY" is NOT "due process". It has been ruled not "PROPER", and thus not "due process", in advance, by *Cadotte* (supra) and scores of other high court decisions in the State field, and the Federal Constitution as to "FAILURE OF SUBSTANTIAL EVIDENCE" not being "DUE PROCESS" is just as sacred, if not more so, as the State Constitution, and "EQUAL PROTECTION" is even more mandatory under the Federal than is "All laws of a *general* nature shall have a *uniform application*" (California *Constitution,* Article I, Section 11) under the State.

The complete answer to *pro forma justice* alleged by counsel is Mr. Justice Fortas' "CONSTITUTIONAL RIGHTS ARE NOT MERE TECHNICALITIES". The 15,000,000 people who will be defrauded of their right to live when industrial injury strikes if the Justices of this High Court follow the "PRO FORMA JUSTICE" banner of opposing counsel to their grave, can't eat technicalities so as to keep them from that grave, and all that opposing counsel can offer them as the mouthpieces of the assassins of their sacred formula that has fed them for half a century is technicalities and more technicalities, paper justice, empty justice, distortion,

twisting "Go Go" justice put on for a show, and more of the same. They have not met the ISSUES squarely, *or in any manner at all.* NOR CAN THEY, as they are devoid of ammunition in this regard so shoot pebbles at your Ombudsman. Being weak on the law and weak on the facts they abuse the prosecutor, who has ALL of the law and ALL of the *facts* on the people's side—the facts in *black and white* in the record in x-rays and written words chosen with extreme care by *themselves* so as to brook no misunderstanding, such as "ESOTERIC", "SOLELY" and "ASSUMED OMNIPOTENCE", and the law from the Supreme Court of California in half a century of adjudications, every SINGLE ONE of which (get this) upholds the half-century national and state GOLDEN RULE OF TANENBAUM that "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM", which, rule created the AUTOMATIC POLICEMAN of "THOU SHALT NOT PRO-RATE TEMPORARY DISABILITIES". Have Your Honors seen any denials in the defending brief that the toiler-worshipped *Lena Tanenbaum* was murdered and her policeman husband of fifty years stabbed in the back by the daggers of three Board members in *Moreali* and two in *Granado?* NO. Their Defending Brief answers this block-busting accusation with thunderous SILENCE.

Have Your Honors seen any denials in that Brief that the two x-rays (1959 and 1962, consolidated as identical in our Petition Exhibit A) introduced as "NEW EVIDENCE" so as to sustain, *without question,* under California Law, our PETITION TO RE-

OPEN, completely demolished their "SOLE" decision writer, Dr. J. B. Josephson, as a man of veracity and credence in that they proved, *in black and white,* that he was a wilful and deliberate perjurer when he swore that the big toe had become so subluxed as to lie "UNDER the second and third toe", a falsehood as to which the x-rays speak LOUDER and CLEARER than words and paint him, in the black and white of film, as a man who loves the Almighty Dollar so much that he performed a TOTALLY UNNECESSARY operation for monetary gain alone that had to be corrected back to the normal position of the x-ray by another doctor and thus, under the universally accepted rule of evidence that a witness false in one particular is presumed false in other particulars, so prove, and by the same token, that he did *not* have the self-assumed *"omnipotence"* he claimed to have (which the Referee, three Board members and ten Justices were evidently convinced on the first appeal he did have) and which formed the ONLY basis for his ruling that the Referee-adjudicated industrial injury caused ZERO per cent of his disability of "immediate pain, swelling . . . and an increase of fluid in the joint" (Pages 44-5 of Petition) that needed lancing only to remedy, which fact of non-omnipotence to make a ruling *only* GOD could make is one also of "JUDICIAL NOTICE" (under the cases cited above) so as to clinch the proof of the "NEW EVIDENCE" x-rays and thus win the people's case by default of NO evidence, since, as the Referee and Board found, this x-ray-destroyed evidence was the "SOLE" evidence in the case and the "SOLE" basis

of their decisions upholding the doctor's "decision" based, again "SOLELY", on his "ASSUMED OMNIPOTENCE"?

Or have Your Honors seen one word in the Opposing Brief to explain why "EQUAL PROTECTION OF THE LAW", under the rule laid down by the California Appellate Court decision they rely on at Page 17 (*Peter Kiewit Sons v. Ind. Acc. Com.* (1965), 234 Cal. App. 2d 831, 839) that "COMMON SENSE DISPENSES WITH MEDICAL EVIDENCE OF CAUSATION" should not apply to Joe Moreali? True, he didn't have a hair-line fracture of the leg which it would take an x-ray to discover but he did have, according to the substitute oracle judge who boasts five times in his testimony of having "decided" Joe's case (which he did, beyond peradventure), Dr. J. B. Josephson, "immediate swelling and a great deal of pain . . . and an increase of fluid in the joint", which no x-ray could discover but the human eye and "COMMON SENSE" could. One industrial injury caused a hair-line fracture in a weak leg, the other industrial injury a swollen line on a weak toe. One you could see with the naked eye, the other with the aid of an x-ray only. Yet the swollen line the human eye could see rated "ZERO" on the "guessing-game" scale of justice, and the other one requiring the aid of an x-ray to discern rated ONE HUNDRED PER CENT on the scale of "SUBSTANTIAL" justice guaranteed BOTH these industrially injured workers by our California Constitution quoted above and guaranteed also by our "EQUAL" and "DUE PROC-

ESS" Justice the Federal Constitution mandates. Can any of the nine most brilliant judicial minds in the nation explain to a stupid Ombudsman like myself by what devious labyrinth of hieroglyphics they can arrive at a decision to dump Joe Moreali and his 14,999,999 co-petitioners into the sea of poverty in California, assuming (1) that the same sacred inscription appears over the door of their Temple of Justice as graced it during the seven years your National Ombudsman spent in the Federal humanitarian field at the Nation's capital a quarter of a century ago; (2) Mr. Justice Fortas' preachment of "CONSTITUTIONAL RIGHTS ARE NOT MERE TECHNICALITIES" is the prevailing view of the nine Hon-Honored Justices; (3) the unanimous California Supreme Court *Tanenbaum* half-century GOLDEN RULE of "ACCELERATION", "AGGRAVATION" or "LIGHTING UP" still has a spark of life left in it in spite of the steel and lead in the back of the Respondent Board's *Granado* and *Moreali* decisions; (4) the corollary unanimous California Supreme Court rule of *Hendrickson* (supra) that the "BENEFITS of the ACT are NOT ALONE for those in PRIME PHYSICAL CONDITION, the LESS FORTUNATE are EQUALLY entitled to compensation" still breathes as the child of *Tanenbaum;* and (5) that our Highest Court has not overruled the doctrine of *Richfield Oil Corporation v. State Board of Equalization,* 329 U.S. 69, 84, 67 S. Ct. 908, 89 L. Ed. 1209 (1946) that these constructions, *"being a matter of state law",* are "BINDING ON US" but

"is NOT determinative of the question whether the tax" (attempted abolition of the two above rules in the instant case) "deprives the taxpayer" (injured industrial worker here) "of a FEDERAL right", which "issue turns not on the characterization which the state has given the tax" (attempted abolition), "but on ITS OPERATION AND EFFECT"?

We hope and pray that our revered most high court will meet this issue head on and not leave 15,000,000 petitioners dangling in the noose of "PETITION DENIED" without being granted a last dying wish to be informed of the nature of the offense that warranted this mass murder of a populace.

12. Page 13. Opposing counsel again seeks to confuse our highest court by turning our sacred landmark *Tanenbaum* decision in California into just another case of factual distinctions on the merits of the individual case before the court. That isn't the way our courts operate in California. Their long-range view of the law as a living, growing thing gives foresight to their opinions. They agree with former Justice B. Rey Schauer of our Supreme Court that "IF SOMETHING IS RIGHT IN PRINCIPLE, THE COURT WILL FIND A WAY TO MAKE IT THE LAW". This is done oftentimes by *dictum,* as was the case in *Tanenbaum* and *Cadotte,* both landmark cases that shaped the history of workmen's compensation in California along humanitarian lines that were "RIGHT" and that *protected* the vast groups of people the Legislature, and the people themselves by Constitutional Amendment, intended to protect, because the court

had COMPASSION for them and didn't want to throw them to the wolves, as is the case of the new ideology that has grown up in California of late to the effect that the worker-wards of the Board don't "DESERVE" such protection (See EXHIBIT A attached hereto), of which philosophy *Henry Granado* and *Joe Moreali* were the first two victims and thus find themselves at this moment before the highest court of our State and the highest court of our Nation as the guinea-pigs for 15,000,000 human souls, all of whom are "PRECIOUS" according to our Vice President, not "undeserving" of the life-giving benefits the war is on to deprive them of and to throw them onto charity.

Representing the deprivers, our opponents, as their legal mouthpieces, are forced to rely on the *dead* part of the *Tanenbaum* decision that deprived the injured employee of a full PERMANENT disability award because some doctors "guessed for hire" that half her PERMANENT disability was due to her previous arthritic condition, a situation fraught with danger within itself due to the overlooked fact that the "guesses" ordinarily are measured by the yardstick of who is paying the bill for them and gaining the goodwill in the way of lucrative operations and patient care that bring Rolls-Royce cars, cruising yachts, spacious summer homes and heated swimming pools, as witness the wild "guess" of the leading carrier "guesser for hire" in the *orthopedic* field in Northern California your Ombudsman pinned down as such of "80 to 90 per cent" for minimal arthritis, as exposed

on Pages 36 to 43 of our Petition, and as further exposed by your Ombudsman in the previous workmen's compensation case he took to this High Court nine years ago (*Mannina v. Ind. Acc. Com.*, No. 578, October Term, 1959), in which he finally won a $90,000.00 award, on PETITION TO REOPEN by the *power of an oath,* in forcing the biggest carrier expert in the *neurological* field in Northern California to admit that he, too, was just "GUESSING" in *ALL* his opinions in these "HIDDEN INJURY" cases. (See Pages 36-7 of our Petition herein.)

It may take another nine years for a proper foundation to be laid and to educate the Referees, Board and Courts to a full realization that the terms *"opinion"* and *"guess"* are SYNONYMOUS in these "HIDDEN INJURY" cases, and thus bribe-tainted, but some day your Ombudsman, and the Ombudsman for the people involved, is coming back into this High Court with a proper test case on the *dead* or PERMANENT disability phase of the *Tanenbaum* case with the hope of having less and less weight given to wild purchased guesses or money-talking "bags of wind" (as I PROVED them to be *literally* in the *Mannina* case, all three of them that were brought into court, on an *actual* scale of justice, for the first time in the history of American jurisprudence, balanced by the "FACTS" on the other side of that scale (see Page 9 of our Petition in the *Mannina* case, supra), that tip the scale of justice unduly in these hidden injury cases, in fact, throw it entirely out of balance, since the poor can't bribe their witnesses with cars and

swimming pools and can rely only on the solid FACTS of injury, which get them nowhere, especially when the guessing doctor is given the status of God, whom no mortal can question, as in the instant case.

But that battle to down-grade bribe-tainted "GUESSES" as evidence in PERMANENT disability rating cases is for another day and another forum, and is not involved *directly* in the current proceeding, unless this High Court should see fit to take the bull by the horns and condemn in a *dictum* if necessary, as our farseeing courts in California do, "GUESSWORK" justice in general, in which this "out of the blue" case presents a golden opportunity for giant strides in this field of protecting the sacred precepts of justice while at the same time giving the people everyday eating justice.

Right now we are concerned with the "no-rating of TEMPORARY disability" dictum, or *living* part of the *Tanenbaum* case (as quoted above), which is just as live today, except for the stab wounds of *Granado* and *Moreali,* as it was the day when uttered by Chief Justice Waste for the guidance of our State, and of our Nation, since all other States in the Union have adopted it as the polar star to guide progress toward greater and greater security in this most precious field of human rights.

So don't get alarmed at the frantic efforts of counsel to win this case for victory's sake over the dead bodies of millions by citing the *dead* portion of the *Lena Tanenbaum* permanent disability rating case that does not apply to our current case of TEM-

PORARY disability, which is governed by the more humane rule the Chief Justice laid down as *dictum* but has become law in California by adoption in thousands upon thousands of cases in the three decades that have passed since then, to the benefit of the people of California in millions upon millions of dollars worth of eats and living and medical expenses and joy galore for millions of California families instead of the tears of sorrow that would have been theirs had Chief Justice Waste and his six associates on our Supreme Court turned out to be "DEPRIVERS" or destroyers to make democracy *malfunction* instead of BUILDERS to *perfect* her sacred precepts. Lena Tanenbaum was merely the guinea-pig or vehicle our State Chief Justice and his unanimous court went out of their way to use, in a *dictum* that has become *dicta tibi est lex* (the law has been declared to you) by *thousands* of later adjudications in the three-decade period it had successfully spanned until it ran up against the intentionally overruling Board in *Granado* and *Moreali,* as a means of RESTATING the law of the previous two decades so as to make it an even half century of solid law that the Board butted its head against, successfully, so far, in this *Moreali* case because the original decision was written by God himself, or one who fraudulently posed as being "OMNIPOTENT", who testified under oath that when he made the decision he *"didn't even consider"* (see Page 18 of Petition for exact wording of the decision) the man-made rule of *Tanenbaum.* Just so can the Nation's Chief Justice and his eight associates (it is to be

doubted that any will dissent on the only ground open, that the doctor really was God), if they want to make a GIANT half-century stride in vitalizing the law and implementing the Constitution as it enters this most sacred segment of the human rights field, overrule this doctor with the flat declaration that he was not God and did not have the claimed "omnipotent" power so that a decision predicated on this assumption "SOLELY", with no other evidence considered in the case, was "IMPROPER" (so as to make the dictum in our Ombudsman *Cadotte* case FEDERAL LAW) and thus not "SUBSTANTIAL EVIDENCE" in accord with "DUE PROCESS" (so as to make the *dictum* of our Supreme Court in *Tanenbaum* FEDERAL LAW by ONE STROKE of the pen of the most revered court in the nation). This much the 15,000,000 petitioners at the bar of this court are entitled to as *the very least* their highest court of justice can do for them. If the court decides to go further and rule that DENIED justice "SOLELY" because the industrial injury *raised* rather than *penetrated* the skin so as to bar him from the rule that the opposed-to-*Tanenbaum* Board cites on Page 17 of its Brief as being the Appellate Court determined law as to those with visible or x-rayable injuries of "COMMON SENSE DISPENSES WITH MEDICAL EVIDENCE OF CAUSATION" is not the "EQUAL" justice that court advertises to the world in front of its building, and thus not "EQUAL PROTECTION OF LAW", its decision could be couched in such simple Abraham Lincoln language that, like his Gettysburg Address and like Chief Justice Waste's

Tanenbaum rule, it would be revered down through the ages and memorized by every law student as more cogent and vital to all of America's 200,000,000 people than Chief Justice Marshall's *Marbury v. Madison* decision that they all read when they enter the field, and would become the decision of the century that "HUMANIZED" the law and the Constitution.

If it goes still further, and follows the *dictum* route of the California Appellate Court in *Cadotte* and the California Supreme Court in *Tanenbaum* in implementing human progress toward the universal goal of "EXACT JUSTICE FOR ALL", an elegantly-worded attack on "GUESSWORK JUSTICE" (which is the antithesis of all that the Supreme Court stands for) would inspire every student of the law in all the years that are to come to consider the law as more than a ditch-digging means of making a livelihood and rather a growing, living instrument of progress toward humanitarian goals that will implement the *twain* objectives of the Constitution of "PROMOTING THE GENERAL WELFARE" and permitting the free from blood-sucking leeches "PURSUIT OF HAPPINESS". In that event our highest court would raise the banner of "EXACT JUSTICE UNDER LAW" as equal to and consistent with "EQUAL JUSTICE UNDER LAW" for all to see and read and thus reverse the trend toward PURCHASED justice that one District division of our State Appellate Court in *Peter Kiewit Sons. v. Ind. Acc. Com.* (1965), 234 Cal. App. 2d 831, 839, cited by the Offending Board in its Brief on Page 17, even attempted to start a crusade for when it said, in

what is perhaps the most self-contradictory decision in all history, on Pages 839-840: "Back disabilities in particular *shout* LOUDLY for expert advice . . . in a field which FORCES the EXPERTS into HYPOTHESIS" (emphasis added). We pray for God's guidance to our High Court as it ponders all these factors in this most crucial decision of this century that will affect the lives not only of our teeming millions in America today but of the generations yet unborn in our ever-increasing population.

13. Page 14. If fortuitously supplied x-rays that PROVE, in *black and white,* FOR ALL BUT THE BLIND TO SEE, that the self-proclaimed "GOD" the Referee *delegated* his DECISION WRITING to, had feet of clay, hands so greedy for gold that they would perform an unnecessary operation to "correct" a fake defect that didn't exist, so as to incapacitate a workman with a family to feed for three months, and then for another three months to recover from the second surgery necessary to restore the toe to the original 13-year position shown in two x-rays taken three years apart, and a psychosis that caused him to proclaim himself as "OMNIPOTENT" and thus able to "ascertain the COMPONENT industrial and non-industrial factors of this particular disability" (Page 18 of our Petition), something that it is absolutely IMPOSSIBLE for any other human being out of the 3,220,000,000 on the face of this earth to do and which fact of inseverability the Supreme Court of our State ruled, in effect, CANNOT be pro-rated by any court so must be taken for what it is, an INSEPARABLE

disability and thus entitled to the necessities of life, including medical attention until it reaches its *permanent* disability state, in which case alone can it be DIVORCED (a sound, sane, workable, feasible and just rule which, if the Highest Court of our Nation abolishes in this group test case, it will be responsible for the years of turmoil and plowing in the sea of poverty for a *workable* substitute which could, UNDER NO CIRCUMSTANCES, be JUST), is not "GOOD CAUSE TO REOPEN" under a law our State Constitution requires a *"liberal construction"* of and Federal rulings of our High Court from time immemorial mandate of liberal construction of as being "remedial" as for the relief of human suffering, then I, as your National Ombudsman, question the dictionary definition of GOOD as *"of commendable quality or character"* and CAUSE as the "purpose for which a thing is done", that of the courts being to save human souls from poverty and that of the Respondent Board we are asking this High Court to overrule being avowedly, BY PUBLIC PRONOUNCEMENT (EXHIBIT A, attached hereto), to cast them onto poverty as "UNDESERVING" of the insured protection the Constitution of California and the Legislature have provided by express enactment and the Courts have implemented by humane rulings that have WORKED effectively toward that protective end for half a century.

14. Page 16. Our opposing attorneys are again reviving the old cry of laches the Referee and Board raised and then abandoned because it fell of its own

weight, not only as inequitable but because the Legislature of California has given an injured worker exactly five years from the date of injury to file a *timely* "PETITION TO REOPEN", which your Ombudsman did here exactly thirty minutes before his time expired and did it only by working day and night for two solid weeks on the PETITION TO REOPEN so as to raise all constitutional issues at the ground level and present them in such a manner that they would be reviewable in the higher courts of our State and Nation. Authorities were cited in the courts below to show that the doctrine of laches did not apply to this 5 years allowed by law that cannot be shortened by court decree, and in the last pleadings of our opponents the issue was dropped, only to be raised here again because of the weak defense on the merits.

In explanation of the delay, so that this High Court will not get the impression that I am a loafer who slept on the rights of my client, and the silent but visualized by him millions dependent upon action by him to protect their rights, will state that I personally took the stand at the first hearing on our PETITION TO REOPEN and explained to the Referee, *under oath,* that as a combined family-supporting attorney and free Ombudsman for the nation, at a saving to my State of a quarter of a million dollars a year for staff hire by employing myself as my own three assistants in wearing legislative, judicial and administrative hats, I am the hardest working attorney of the 300,000 in the nation, bar none, since for the last five

years I have, at the age of 75, worked day and night, Saturdays, Sundays and holidays, the 24-hour clock around, except for snatches of sleep in my big leather arm chair with my feet on another leather chair and my overcoat over me for warmth, and three meals a day in the little kitchenette adjoining my office, with no vacation for 8 years, and only the comics for recreation, to keep a breast of my law practice that feeds a wife and puts a third son through college while acting *concurrently* as the nation's unpaid Ombudsman, in which capacity I processed, during the 5 year period, 19 other test cases before the lower courts and at the administrative level, 8 test cases at the Appellate Court level, 8 curative measures before the 1965 Legislature, 16 at the 1967 session, 6 at the 1968 session and have 14 already drawn and approved by the Legislative Counsel for introduction at the next 1969 session. I knew that when I started this case I would have to be prepared, financially and timewise, to carry it clear through to Your Honors and it has meant borrowing $350.00 on my Bankamericard, $2,200.00 on my remaining $10,000.00 of life insurance and $800.00 otherwise toward the $2,000.00 costs and $6,000.00 of lost office time that I will be out as a result of playing free Ombudsman to 15,000,000 people in this case in which I am being so bitterly assailed by the destroyers of their rights on every flimsy pretext that they can find. If my efforts are in vain because of their chicanery then it will be "love's labor lost", and a Gettysburg battle lost on the national front, but with a war ahead to win, which I will tackle with renewed vigor the day the Legislature opens at the dawn of the New

Year, which will be a bleak one for California's teeming millions cast onto our charity rolls by the Supreme Court of our nation and perhaps millions elsewhere in the nation until I can build STATUS enough to extend my Ombudsmanic activities to their States.

Right now they are limited to the State of California and on January 2, 1969, I will cause to be introduced, along with a dozen or so other remedial measures in the field of people's right to exist when calamity strikes, the two remedial measures in the workmen's compensation field attached hereto as EXHIBITS C and D, which will be introduced for the FOURTH TIME in spite of the warning from the Chairman of the Assembly Subcommittee on Workmen's Compensation that his committee did not look with favor upon my "repeat" introduction of these bills they have turned down so many times. Little does he know that they are the most vital bills of the decade to save the Workmen's Compensation Law his subcommittee is supposed to protect from emasculation and that if they had been approved three sessions ago *Granado* would not be before our State Supreme Court on bended knee and *Moreali* and his associated millions would not be before Your Honors on bended knees and with upraised hands pleading with this High Court to remedy the malfunctioning of our legislative body as well as of the administrative body and approving courts in this most sacred corner of our democracy—its LIVING room.

A PLEA FOR EXECUTIVE, LEGISLATIVE AND JUDICIAL COOPERATION

This brings us to our concluding plea in this ONLY test case to ever come before our highest and most sacred court in this most sacred field of human rights in the 180 years of its existence.

Our plea is to the Executive Department first of all, to California's Governor, who is on the list for both Petition and Brief, to repudiate publicly the reversal of California's half-century humane policy issued in his name (EXHIBIT A) that tore the cornerstone out of the workmen's compensation structure we builders of Hiram Johnson's day placed there with such care to endure forever.

Our next plea is to the Legislature to restore that cornerstone before the entire structure topples of its own weight, to the Speaker, whose office has also recognized me as "AMERICA'S UNOFFICIAL AND UNCOMPENSATED OMBUDSMAN", who could not only tell the committees he appoints to get wise to what's going on in the world and give us a hand in our five-year battle to repair the 57-year old eroding structure before it is too late, but could remove some of the roadblocks to progress that cause such expenditures as $8,000.00 of my time and money as this appeal to the highest court in the land (which is borrowed Ombudsman money, not taxpayer $32,000.00 per year, plus a quarter of a million per year for staff, he wants to pay to an Official Ombudsman as a free Civil Public Defender to handle the dog-bite gripes of the rich while the poor starve because he

permits his committees to sanction, by their silence, cutting their Legislature-set $70.00 per week compensation and full medical attention to $35.00 per week and half medical expenses (as with *Granado*) or $00.00 per week and no medical expenses (as with *Moreali*) on the mere say-so of an under-oath proved "GUESSING DOCTOR FOR HIRE" or professional testifier, one of whom even poses as God to overrule the Legislature, and gets away with it, clear to our very highest court.

I say to the Speaker, who is on the list for copies of both Petition and Brief, along with each legislator in any way involved, that if the two life-saving measures we introduced this year through his Majority Floor Leader but were thrown in the waste-basket, attached hereto as EXHIBITS C and D, and the other measure we introduced through him to keep our own State Government from defrauding 6,000,000 workers, and their 8,000,000 dependents, by a dishonest 28-day Statute of Limitations on claims for off-the-job disabilities, and the two measures to cure the two main defects in the Juvenile Court Act (one of which even applies the civil or animal rule, of "preponderance of evidence", to the sacred right of children to freedom), are not passed by the next Legislature before the Easter vacation, I will personally charter four busses (instead of the four cars we used in the 1965 Legislature to the scorn of the subcommittee on workmen's compensation) to haul those of California's school children we can interest in the work of humanity through our educational campaign

as LINCOLN AIDES (adults seemingly are interested in only two things in life — — MONEY and PLEASURE) to Sacramento to demand the right to be heard, through their Ombudsman trying to protect them and their parents in their basic constitutional rights in these three fields of human rights that touch the lives of all of California's 20,000,000 people, and I'll have large signs painted on these busses to read: "LINCOLN AIDES EN ROUTE TO SACRAMENTO TO MAKE DEMOCRACY FUNCTION PROPERLY".

With the courts, such mass exercise of the right of the people (and children are people in spite of being classed with dogs as to their most precious right to "LIBERTY") "peaceably to assemble, and to petition the Government for a redress of grievances" *(Amendment I, United States Constitution)* cannot be exercised directly. But it can be exercised with the pen ("which is mightier than the sword", according to those in the know) and when that pen is wielded by their Ombudsman, trained in the ways of the world, and of Government, in all fields, for 58 years, admitted to the Bar of his State and of the Nation so as to entitle him to walk into the door of this High Court, Lincoln beard and all, bearing the torch for 15,000,000 people, those people are themselves in court, en masse, and are raising their muted voices in silent protest and supplication to the judicial branch of their Government for the redress of their grievance that the administrative branch of their government has taken the very heart out of their

most protective statute while their Legislature sits with folded hands watching it being emasculated to the point of impotency as far as real protection is concerned, and their State courts nod their heads in unthinking approval, even of the basic premise of the emasculation, namely, that God himself in the form of a human being with powers of "OMNIPOTENCE" has spoken. Should our Highest Court give its benediction to this scene, Heaven help the poor working people of America. We, the people, pray that the ink will dry on the pen that would inflict such a dire calamity upon the nation.

Dated, San Francisco, California,
August 26, 1968.

Respectfully submitted,
ARTHUR L. JOHNSON,
Attorney for Petitioner, and, as amicus curiae, America's Unofficial and Uncompensated Ombudsman, Lincoln's Chief Aide in Making Democracy Work PROPERLY, Candle Lighter, Torch Bearer and Champion of Justice and Scientific and Economical Government with a Heart, and, in these capacities, representing all of the 200,000,000 people of the nation, whose interests will be affected, in one way or another, by a devastating blow of "Writ Denied" in this group test case on behalf of humanity in general.

(Exhibits Follow)

EXHIBIT A

★★★ San Jose News 45 Fri., July 14, 1967

Payment Policy Hit

State Compensation Benefits Assailed

LOS ANGELES (UPI) — The new administrator of the State Division of Industrial Accidents said the Reagan administration wants to put a stop to cases of employes receiving workmen's compensation for reasons not arising from employment.

Roy J. Bell, appointed to his post by Gov. Reagan, said Thursday that employer costs of workmen's compensation benefits have jumped 91 per cent since 1960.

He attributed a substantial part of this increase to workers receiving benefits they were not entitled to under the law.

Bell said that under former Democratic Gov. Brown's administration, "certain decisions were made (in industrial accident cases) which extended coverage of the law beyond the intent of the Legislature."

He said the Reagan administration wants to put a stop to such cases.

Bell said he could not estimate the number of cases in which "undeserved" benefits were paid but said the number was substantial.

EXHIBIT B

State of California

GOVERNOR'S OFFICE

SACRAMENTO 95814

RONALD REAGAN
GOVERNOR

May 9, 1967

Mr. Arthur L. Johnson
Executive and Legislative Secretary
General Welfare Federation of America, Inc.
Suite 5, Terrace Building
481 North First Street
San Jose, California 95112

Dear Mr. Johnson:

Governor Reagan has read your letter of March 20 with its enclosures, and has asked me to thank you for sending it to him.

It is most evident that you have waged a long and intensive career as "America's unofficial and uncompensated Ombudsman".

Sincerely,

Vernon L. Ellingson

EXHIBIT C

ASSEMBLY BILL No. 2033

Introduced by Assemblyman Zenovich

April 16, 1968

SECTION 1. Section 4663 of the Labor Code is amended to read:

4663. In case of aggravation of any disease existing prior to a compensable injury, *permanent disability* compensation shall be allowed only for the proportion of the disability due to the aggravation of such prior disease which is reasonably attributed to the injury. *It has always been the law in California that temporary disability compensation and medical treatment are not to be denied an industrially injured workman merely because he is not in perfect physical condition when injured, that industry takes him as it finds him, and that any "lighting up" is fully compensable.*

EXHIBIT D

ASSEMBLY BILL No. 2032

Introduced by Assemblyman Zenovich

April 16, 1968

SECTION 1. Section 3202 of the Labor Code is amended to read:

3202. The provisions of Division 4 *(commencing with Section 3201)* and Division 5 *(commencing with Section 6300)* of this code shall be liberally construed by the courts *and by the Department of Industrial Relations and its divisions, boards and referees* with the purpose of extending their benefits for the protection of persons injured in the course of their employment *and their dependents. In making any determination, lay testimony as to the facts shall be weighed along with any opinion evidence and judicial notice of any self-evident facts shall be taken.*